



## Item 9 - Proposed Settlement

- 1 1. This Stipulation will be submitted for consideration by the City of Oakland Public  
2 Ethics Commission (Commission) at its next regularly scheduled meeting.
- 3 2. This Stipulation resolves all factual and legal issues raised in this matter and represents  
4 the final resolution to this matter without the necessity of holding an administrative  
5 hearing to determine the liability of, or penalties and/or other remedies to be imposed  
6 upon, Respondent.
- 7 3. Respondent knowingly and voluntarily waives all procedural rights under the Oakland  
8 City Charter, Oakland Municipal Code, the Public Ethics Commission Complaint  
9 Procedures, and all other sources of procedural rights applicable to this PEC  
10 enforcement action. These procedural rights include, but are not limited to, the right to  
11 personally appear at an administrative hearing held in this matter, to be represented by  
12 an attorney at their own expense, to confront all witnesses testifying at the hearing, to  
13 subpoena witnesses to testify at the hearing, and to have the matter judicially reviewed.
- 14 4. Respondent represents that they have accurately furnished to the Commission all  
15 discoverable information and documents that are relevant to the Commission's  
16 determination of a fair and comprehensive resolution to this matter.
- 17 5. Upon approval of this Stipulation and full performance of the terms outlined in this  
18 Stipulation, the Commission will take no future action against Respondent regarding the  
19 violations of law described in Exhibit #1 to this Stipulation, and this Stipulation shall  
20 constitute the complete resolution of all claims by the Commission against Respondent  
21 related to such violations.
- 22 6. If Respondent fails to comply with the terms of this Stipulation, then the Commission  
23 may reopen this matter and prosecute Respondent to the full extent permitted by law,  
24 except that the Statute of Limitations shall be waived for any violations that were not  
25 discoverable by the Commission due to non-compliance with the terms of this  
26 Stipulation.
- 27 7. This Stipulation is not binding on any other law enforcement or regulatory agency, and  
28 does not preclude the Commission or its staff from referring the matter to, cooperating

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1 with, or assisting any other government agency with regard to this matter, or any other  
2 matter related to it.

3 8. Respondent admits that they violated the provision(s) of the Oakland Municipal Code  
4 specified in Exhibit #1 to this Stipulation, and in the manner set forth in that Exhibit,  
5 which is expressly incorporated by reference in its entirety to this Stipulation and  
6 represents a true and accurate summary of the facts in this matter.

7 9. Respondent will fully cooperate with any related enforcement actions that may be  
8 brought against other Respondents in this or other related matters, including but not  
9 limited to the provision of truthful testimony at an administrative hearing or similar  
10 proceeding, should the need ever arise.

11 10. The Commission will impose upon Respondent the penalties and/or other remedies  
12 specified in Exhibit #1.

13 11. A cashier's check from Respondent, in the amount specified in Exhibit #1 to this  
14 Stipulation, made payable to the "City of Oakland," is submitted with this Stipulation as  
15 full payment of the administrative penalty specified in Exhibit #1, to be held by the  
16 Commission until the Commission issues its decision and order regarding this matter.

17 12. In the event the Commission refuses to accept this Stipulation, it shall become null and  
18 void, and within fifteen business days after the Commission meeting at which the  
19 Stipulation is rejected, all payments tendered by Respondent in connection with this  
20 Stipulation will be reimbursed to them.

21 13. In the event the Commission rejects this Stipulation and a full evidentiary hearing  
22 becomes necessary, this Stipulation and all references to it are inadmissible as evidence,  
23 and neither any member of the Commission, nor the Executive Director or any member  
24 of PEC staff, shall be disqualified from that hearing because of prior consideration of  
25 this Stipulation.


26 14. This Stipulation may not be amended orally. Any amendment or modification to this  
27 Stipulation must be in writing duly executed by all parties and approved by the  
28 Commission at a regular or special meeting.

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1 15. This Stipulation shall be construed under, and interpreted in accordance with, the laws  
2 of the State of California and the City of Oakland. If any provision of the Stipulation is  
3 found to be unenforceable, the remaining provisions shall remain valid and enforceable.

4 16. The parties hereto may sign different copies of this Stipulation, which will be deemed to  
5 have the same effect as though all parties had signed the same document. Verified  
6 electronic signatures shall have the same effect as wet signatures.

7  
8 So agreed:

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Simon Russell (Feb 28, 2024 15:27 PST)  
12 Simon Russell, Chief of Enforcement  
13 City of Oakland Public Ethics Commission, Petitioner

Feb 28, 2024  
Dated

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Susan Montauk (Feb 28, 2024 15:26 PST)  
18 Susan Montauk, Respondent

Feb 28, 2024  
Dated

**DECISION AND ORDER**

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The foregoing Stipulation of the parties to “In the Matter of Susan Montauk,” PEC Case No. 19-01.2, including all attached Exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

So ordered:

\_\_\_\_\_  
Ryan Micik, Chair  
City of Oakland Public Ethics Commission

\_\_\_\_\_  
Dated

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EXHIBIT # 1

In the Matter of Susan Montauk

PEC # 19-01.2 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

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## INTRODUCTION

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2  
3 This case concerns a ballot measure campaign committee active in the November 2018  
4 election in Oakland that, unknown to the public, was controlled by an elected official whom  
5 we shall refer to as “Candidate A” in this document.<sup>1</sup> The committee was called “The Oakland  
6 Fund” and it supported a ballot measure meant to impose a parcel tax for purposes of funding  
7 education-related programs. Candidate A was closely involved with that ballot measure  
8 campaign and wished to use The Oakland Fund (which had existed for a number of years  
9 without Candidate A’s involvement) as a public-facing mechanism for depositing and  
10 disbursing campaign funds for it.

11 Because The Oakland Fund never registered as a “candidate-controlled” ballot  
12 measure committee or incorporated Candidate A’s name into its own (which ballot measure  
13 committees controlled by an elected official are required to do), it was able to avoid informing  
14 the public that it was controlled by Candidate A during the 2018 election.

15 Respondent Susan Montauk was a board member of The Oakland Fund during this  
16 time. She had personal knowledge of Candidate A’s involvement with the ballot measure  
17 campaign and voted for The Oakland Fund to become the vehicle for depositing and  
18 disbursing funds related to that campaign. However, she was unaware of the legal  
19 implications of such an arrangement and had limited involvement with the rest of the  
20 campaign operations.

21 PEC staff and Respondent have agreed to settle this matter without an administrative  
22 hearing. Respondent has further agreed to cooperate with the PEC in any other enforcement  
23 actions that may be brought against other persons involved in this matter, including by  
24 providing truthful testimony concerning the facts laid out in this document, should the need  
25 ever arise. PEC staff and Respondent are now presenting their stipulated agreement,  
26 summary of the facts, and legal analysis to the City of Oakland Public Ethics Commission for

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27 <sup>1</sup> PEC staff is withholding Candidate A’s identity at this time due to other pending enforcement matters.  
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1 its approval. Together, PEC staff and Respondent recommend approval of their agreement  
2 and imposition of administrative penalties totaling \$500, as described in more detail below.

### FACTUAL SUMMARY

#### *“Candidate A” Convinces The Oakland Fund To Act as a Campaign Vehicle*

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8 The Oakland Fund was a ballot measure committee that had been created long  
9 before Candidate A ever got involved with it. It was originally formed by a group of Oakland  
10 residents in 2008 to support various ballot measures meant to increase local tax revenue  
11 and balance the City’s budget. Over the following years it had supported other initiatives as  
12 well. As the 2018 campaign season approached, the Oakland Fund was being managed by a  
13 three-person board and did not have any plans to engage in that year’s election.

14 Meanwhile, an elected official whom we shall refer to as “Candidate A” had been  
15 closely involved in the preparations for an initiative that had recently qualified for the ballot,  
16 called “Measure AA.” Some funds for that campaign had already been raised and a  
17 campaign plan worked out, but the Measure AA backers still lacked an official ballot  
18 measure committee through which funds would be deposited and disbursed, and which  
19 would serve as the public face for the campaign.

20 At that point, Candidate A personally called two of the Oakland Fund board members  
21 (Eugene Zahas and Susan Montauk) and asked if the Oakland Fund could be used for those  
22 purposes. Over lengthy discussion, an understanding was reached between Candidate A and  
23 the Oakland Fund that the latter would receive contributions and pay the campaign’s bills,  
24 but would not be involved in day to day operations. They also understood that the preferred  
25 accounting firm of the Measure AA team would handle all of the necessary behind-the-  
26 scenes paperwork, and that the Oakland Fund would receive a large initial donation to cover  
27 the salary of Candidate A’s representative on the campaign team, as well as other campaign  
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1 expenses. And because The Oakland Fund already had a balance of about \$10,000 of its  
2 “own” money before Candidate A contacted them, which would soon be mixed with  
3 incoming Measure AA funds, the Oakland Fund was promised that they could keep \$10,000  
4 at the end of the campaign in order to avoid potentially losing money.

5 In an internal email to other board volunteers (including Montauk), Oakland Fund  
6 treasurer Zahas summarized his initial conversation with Candidate A in the following way:  
7 “[Candidate A] wants the Oakland Fund to handle the [Measure AA] campaign. Actually, we  
8 will just be acting as fiscal agent, as there is (or will be) a campaign committee.”<sup>2</sup> Two other  
9 people we shall refer to as Person B and Person C also conducted follow-up conversations  
10 with the Oakland Fund board volunteers about these arrangements; Zahas told the rest of  
11 the board (including Montauk) that Person B and Person C were “carrying the ball for  
12 [Candidate A].”

13 Despite some initial reluctance, the three board members of the Oakland Fund then  
14 met and agreed to let their committee be used as Candidate A had requested. They also  
15 changed the committee’s name to “The Oakland Fund For Measure AA.” This new name did  
16 not mention Candidate A’s involvement, nor did any of the campaign forms that The  
17 Oakland Fund filed throughout the campaign. At no point was Montauk advised that there  
18 might be additional legal requirements arising from Candidate A’s involvement with the  
19 Oakland Fund, nor did Montauk possess the training or experience to flag this as a potential  
20 issue.

21 Throughout the campaign, The Oakland Fund received over \$1.8 million dollars in  
22 contributions on behalf of Measure AA – far in excess of any amount of money it had ever

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23  
24 <sup>2</sup> This is somewhat confusing terminology, in that the legal term “campaign committee” normally refers to the  
25 entity that collects and disburses campaign funds (like The Oakland Fund). Here, Zahas was informally using  
26 the term “campaign committee” to refer to a separate group of people who would apparently be in charge of  
27 actually running the day-to-day operations of the campaign.  
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1 received in previous elections – and wrote expenditure checks covering the same amount  
2 (not including the \$10,000 it was allowed to keep for acting as the campaign vehicle).  
3 Ultimately, Measure AA passed with 62% of the vote.

#### *Campaign Forms Filed by The Oakland Fund*

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7 Throughout the campaign, The Oakland Fund filed numerous campaign forms with  
8 the PEC that failed to disclose that “Candidate A” was its controlling candidate.

#### *Form 410*

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11 The first type of form that The Oakland Fund filed with the PEC is called a Form 410  
12 (“Statement of Organization”). These are forms that a committee must file when its first  
13 registers as a campaign, and whenever it changes its name, purpose, or main personnel. It  
14 must also disclose on these forms whether it is a controlled committee of a candidate or  
15 officeholder. The forms must be signed by the controlling candidate, under penalty of perjury.  
16 Finally, it is the form on which a committee declares what its name will be. As explained in  
17 more detail later in this Exhibit, candidate-controlled committees are required to put the last  
18 name of their controlling candidate in the committee’s name (e.g. “Committee X, a Controlled  
19 Committee of Oakland Councilmember Smith”). The purpose of the form is to inform the  
20 public of who is running a particular campaign committee and whether it is controlled by any  
21 elected officials or candidates.

22 The table below shows all of the dates that The Oakland Fund filed a Form 410 in 2018  
23 (i.e., the time period when Candidate A was involved with the committee). It did not disclose  
24 that it was a controlled committee, did not identify Candidate A as its controlling candidate,  
25 and failed to include Candidate A’s last name in its committee name on any of these forms.  
26 Candidate A did not sign any of the forms.

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Form 410s Filed by The Oakland Fund, March – August 2018	
Date Filed	Committee Name Given on Form
March 23, 2018	“The Oakland Fund”
August 22, 2018	“The Oakland Fund For Measure AA”

#### Form 460

The Oakland Fund also filed multiple forms known as a Form 460 (“Recipient Committee Campaign Statement”). These are periodic reports that a committee must file in order to report all of the money that it has raised and spent throughout the campaign. It must use its full committee name on the form, and report whether it is a controlled committee of a candidate or officeholder. The forms must be signed by the controlling candidate, under penalty of perjury. The purpose of the form is to inform the public where committees are getting their money from, and what they are spending it on. The purpose of declaring whether the committee is controlled by an elected official is so that the public can be informed of which donors might be indirectly benefiting from their donations to that official’s committee, as well as allowing the public to check whether any of those donors are City contractors.

The table below shows all of the dates that The Oakland Fund filed a Form 460 with the PEC, reporting the money it had raised and spent from January through December 2018 (i.e. the time period when Candidate A was involved with the committee). On each of these forms, it gave its name as either “The Oakland Fund” or “The Oakland Fund for Measure AA.” It failed to include Candidate A’s last name in its committee name, did not disclose that it was a controlled committee, and did not identify Candidate A as its controlling candidate on any of these forms. Candidate A did not sign any of the forms as its controlling candidate:

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Form 460s Filed by The Oakland Fund Covering January 1 – December 31, 2018		
Date Filed	Dates Covered	Committee Name Given on Form
April 25, 2018	January 1 – March 31, 2018	“The Oakland Fund”
July 24, 2018	April 1 – June 30, 2018	“The Oakland Fund”
August 10, 2018	April 1 – June 30, 2018 (amendment)	“The Oakland Fund”
September 27, 2018	July 1 – September 22, 2018	“The Oakland Fund for Measure AA”
October 23, 2018	September 23 – October 20, 2018	“The Oakland Fund for Measure AA”
January 14, 2019	October 21 – December 31, 2018	“The Oakland Fund for Measure AA”
June 11, 2019	October 21 – December 31, 2018 (amendment)	“The Oakland Fund”

### Form 497

The Oakland Fund also filed what are known as Form 497s (“Contribution Reports”, sometimes informally referred to as “24-hour contribution reports”). These forms must be submitted within 24 hours, whenever a primarily-formed committee (such as The Oakland Fund) receives \$1,000 or more from a single donor in the 90 days before the election concerning the measure that the committee is supporting. The purpose of the form is to the inform the public -- before the election -- of which donors are making large contributions benefitting certain committees, particularly if they are controlled by a candidate or officeholder.

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1 The table below shows all of the dates that The Oakland Fund filed a Form 497 with  
2 the PEC, reporting the contributions over \$1,000 it had raised from August 2018 until the  
3 election that same year (when Candidate A was its controlling candidate). On each of these  
4 forms, it gave its name as either “The Oakland Fund” or “The Oakland Fund For Measure AA.”  
5 It failed to include Candidate A’s last name in its committee name:

Form 497s Filed by the Oakland Fund While Candidate A Was Controlling Candidate		
Date Filed	Committee Name Given on Form	Activity Reported
August 14, 2018	“The Oakland Fund”	\$77,500 in contributions received
August 29, 2018	“The Oakland Fund For Measure AA”	\$12,000 in contributions received
September 20, 2018	“The Oakland Fund For Measure AA”	\$25,000 in contributions received
September 21, 2018	“The Oakland Fund For Measure AA”	\$1,000 in contributions received
September 25, 2018	“The Oakland Fund For Measure AA”	\$75,000 in contributions received
October 2, 2018	“The Oakland Fund For Measure AA”	\$20,625 in contributions received
October 12, 2018	“The Oakland Fund For Measure AA”	\$63,000 in contributions received
October 15, 2018	“The Oakland Fund For Measure AA”	\$40,000 in contributions received
October 19, 2018	“The Oakland Fund For Measure AA”	\$102,500 in contributions received
October 23, 2018	“The Oakland Fund For Measure AA”	\$10,000 in contributions received
October 24, 2018	“The Oakland Fund For Measure AA”	\$44,800 in contributions received
October 25, 2018	“The Oakland Fund For Measure AA”	\$75,000 in contributions received

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1 2 3	October 30, 2018	“The Oakland Fund For Measure AA”	\$15,000 in contributions received
4 5	November 1, 2018	“The Oakland Fund For Measure AA”	\$35,000 in contributions received
6 7	November 5, 2018	“The Oakland Fund For Measure AA”	\$20,000 in contributions received

#### *Montauk’s Cooperation with the PEC*

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Montauk was forthcoming and cooperative with PEC investigators throughout this investigation. She was open about her role with The Oakland Fund and the events described above, and provided what appears to be complete and truthful answers to PEC investigators’ questions. She also evinced an understanding of the potential public harm involved and indicated a good faith desire to work the PEC in order to address and remedy any errors or other violations that may have occurred. Montauk also voluntarily provided documents to the PEC concerning the events of this case, and her production of documents appeared to be complete.

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PEC staff found Montauk to be credible. As part of the settlement of this matter, Montauk has agreed cooperate with the PEC in its resolution of any related enforcement actions that might be brought against other persons involved, by stipulating to the facts of which she has personal knowledge and agreeing to provide truthful testimony should the need arise.

#### **SUMMARY OF LAW & LEGAL ANALYSIS**

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

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1 All definitions of terms are the same as those set forth in the California Political Reform  
2 Act (California Government Code Sections 81000 through 91014), as amended, unless the term  
3 is specifically defined in Oakland’s Campaign Reform Act (Oakland Municipal Code Chapter  
4 3.12) or the contrary is stated or clearly appears from the context.<sup>3</sup>

5 Provisions of the California Political Reform Act relating to local elections, including  
6 any subsequent amendments, are incorporated into the Oakland Campaign Reform Act  
7 (OCRA), except as otherwise provided in, or inconsistent with, or other provisions of local  
8 law.<sup>4</sup>

#### *The Oakland Fund Was A Candidate-Controlled Committee*

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11  
12 All of the alleged violations in this matter hinge on whether The Oakland Fund was  
13 “candidate-controlled” during the events in question. Being a candidate-controlled  
14 committee is not a violation in-and-of itself; but candidate-controlled committees have  
15 additional disclosure requirements, and restrictions on the contributions they can accept.<sup>5</sup>  
16 Therefore, to determine whether The Oakland Fund violated any of the laws applicable to  
17 candidate-controlled committees, it must first be established that it was indeed “candidate-  
18 controlled.”

19 A committee is candidate-controlled if a candidate or elected official has a “significant  
20 influence” on the actions or decisions of the committee.<sup>6</sup>

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22 <sup>3</sup> OMC § 3.12.140.

23 <sup>4</sup> OMC § 3.12.240(d).

24 <sup>5</sup> For example, Oakland law specifies that candidate-controlled committee cannot receive contributions from  
25 City contractors. Because Montauk largely lacks personal knowledge of any such possible violations and is not  
26 being charged with any such possible violations, we will not be discussing them in this Exhibit.

27 <sup>6</sup> OMC § 3.12.040; Cal. Govt. Code § 82016.  
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#### **Element 1: Committee**

The first element to establish is whether The Oakland Fund qualified as a “committee.” A “committee” is any person or combination of persons who directly or indirectly receives campaign contributions totaling two thousand dollars (\$2,000) or more in a calendar year, or who makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year.<sup>7</sup>

Here, The Oakland Fund received contributions in 2018 well in excess of \$2,000, according to its sworn campaign reporting forms. It was also registered as a campaign committee during all of the events in this case, having first registered as such in 2008.

#### **Element 2: Candidate or Elected Official**

The second element to establish if a committee is candidate-controlled is whether the person alleged to have controlled the committee was a candidate or elected official. The term “candidate” includes an elected officer.<sup>8</sup> “Elected officer” means any person who holds an elective office.<sup>9</sup>

Here, “Candidate A” was a candidate or elected official because they were already serving as an elected Oakland official at the time of their involvement with The Oakland Fund. They were also a candidate for City office in the 2018 election (the same election in which

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<sup>7</sup> Cal. Govt. Code § 82013.

<sup>8</sup> OMC § 3.12.040(B); Cal. Govt. Code § 82007.

<sup>9</sup> OMC § 3.12.040; Cal. Govt. Code § 82020.



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1 Measure AA was to be voted upon). “Candidate A” also had at least one other open campaign  
2 committee at the time, for which they were registered as the controlling candidate.

### 3 4 **Element 3: Significant Influence on the Actions or Decisions of the Committee**

5  
6 Finally, to establish that a committee is candidate-controlled, there must be sufficient  
7 facts to show that a candidate or elected official had “significant influence” on the actions or  
8 decisions of the committee.<sup>10</sup> Such influence can be direct or indirect.<sup>11</sup> Examples of the type  
9 of behavior that might constitute significant influence include communicating with a  
10 committee about its campaign strategy, messaging, or advertising, or making substantial  
11 fundraising efforts for a committee.<sup>12</sup> Actions that do not constitute significant influence  
12 include things such as publicly supporting a campaign, making donations from the official’s  
13 own personal funds to a campaign, or appearing on a committee’s advertisements without  
14 working on the messaging of those advertisements.<sup>13</sup> It also does not include providing  
15 ministerial or administrative support to a campaign (e.g. bookkeeping).<sup>14</sup> It does not matter  
16 whether the candidate has an official title or role on the campaign: “[P]ractical operational  
17 realities, rather than job title, determine whether a committee is controlled.”<sup>15</sup>

18 Here, The Oakland Fund would not have been involved at all with the Measure AA  
19 campaign were it not for Candidate A’s influence. It was Candidate A who contacted the  
20 Oakland Fund and convinced them to become the vehicle for the Measure AA campaign

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22 <sup>10</sup> Cal. Govt. Code § 82016.

23 <sup>11</sup> Id.

24 <sup>12</sup> *Travis v. Brand*, 62 Cal. App. 5th 240, 251, 261-262 (2021); FPPC *Pirayou* Advice Letter, No. I-10-159 (2010).

25 <sup>13</sup> *Travis v. Brand*, 62 Cal. App. 5th 240, 261-262 (2021).

26 <sup>14</sup> *Lacy* Advice Letter, FPPC #I-03-076 (2003).

27 <sup>15</sup> *Lacy* Advice Letter, FPPC #I-03-076 (2003) at 2 (internal quotation marks omitted).

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1 despite the initial reluctance of the committee’s volunteer board. Candidate A also connected  
2 The Oakland Fund with key personnel of the Measure AA campaign, including those that  
3 Oakland Fund board members understood to be acting as agents for Candidate A.<sup>16</sup> Only after  
4 this intervention by Candidate A and their representatives did The Oakland Fund reorient its  
5 existing plans and decide to get involved in the Measure AA campaign. The actual scope and  
6 terms of The Oakland Fund’s interactions with the Measure AA campaign were also  
7 determined by this intervention by Candidate A and their representatives, such as The  
8 Oakland Fund’s hands-off role with day-to-day operations and its anticipated payment of  
9 \$10,000 at the close of the campaign to make whole the bank balance that The Oakland Fund  
10 account carried before mixing in the Measure AA funds. In short, all of The Oakland Fund’s  
11 activity and the nature of its operations throughout the 2018 campaign was the result of  
12 Candidate A’s influence.

#### *The Oakland Fund Failed to Publicly Identify Candidate A as Its Controlling Candidate*

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14  
15  
16 All committees must register with the appropriate filing officer<sup>17</sup> and file periodic  
17 campaign forms itemizing their contributions and expenditures.<sup>18</sup> For committees that are  
18 controlled by an Oakland elected officer, or which are primarily-formed to support or oppose  
19  
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21 <sup>16</sup> Candidate A may also have influenced the strategy, budget, internal organization, and fundraising of the  
22 Measure AA campaign before and after securing The Oakland Fund as a campaign vehicle, all of which would  
23 be further evidence of Candidate A’s control over that committee. But because Montauk largely lacks personal  
24 knowledge of such matters we are not including them in this Exhibit or asking the Commission to adopt any  
25 such findings at this time.

26 <sup>17</sup> Cal. Govt. Code § 84101.

27 <sup>18</sup> Cal. Govt. Code § 84215.

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1 a candidate in an Oakland election, their filing officer is the PEC.<sup>19</sup> The forms they must file  
2 (including any amendments to those forms) include:

- 3
- 4 • the committee’s initial registration and termination statements (Form 410); and<sup>20</sup>
- 5 • its pre-election and semi-annual campaign statements (form 460).<sup>21</sup>
- 6

7 Each of those reports, including amendments, must include the committee’s full  
8 name.<sup>22</sup> For a candidate-controlled committee, its name must include the last name of its  
9 controlling candidate<sup>23</sup> (e.g. “... a controlled committee of Councilmember Smith”). The Form  
10 410 and Form 460 must also be signed by the controlling candidate, under penalty of perjury.<sup>24</sup>

#### 11

#### 12 **Element 1: Candidate-controlled committee**

#### 13

14 The first element to establish whether The Oakland Fund failed to file campaign forms  
15 identifying Candidate A as its controlling candidate, is to show that Candidate A did indeed  
16 control that committee. As demonstrated above, The Oakland Fund was a candidate-  
17 controlled committee of Candidate A, an Oakland candidate and elected official.

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20 <sup>19</sup> OMC §§ 3.12.240, 3.12.260, Cal. Govt. Code §§ 84101, 84215(d).

21 <sup>20</sup> Cal. Govt. Code § 84101; Cal. Code of Regulations §18410(a)(3); OMC §§ 3.12.240, 3.12.260.

22 <sup>21</sup> Cal. Govt. Code §§ 82006, 84200, 84200.8; OMC §§ 3.12.240, 3.12.260.

23 <sup>22</sup> Cal. Govt. Code §§ 84102, 84106.5 (full committee name required on Form 410); § 84211(o) (full committee  
24 name required on Form 460); § 84203(a) (full committee name required on late contribution report); 84204(b)  
25 (full name required on late independent expenditure report).

26 <sup>23</sup> Cal. Govt. Code § 84106.5; Cal. Code of Regulations § 18402(c)(1).

27 <sup>24</sup> Cal. Govt. Code §§ 84101, 84213(a); Cal. Code of Regulations §18410(a)(13).

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#### **Element 2: Failure to Disclose Candidate-Controlled Status on Forms**

The next element to establish whether The Oakland Fund failed to file campaign forms identifying Candidate A as its controlling candidate, is to demonstrate the committee filed forms that lacked the required disclosure particular to each form.

#### *Form 410*

A Form 410 must include the committee’s full name. For a candidate-controlled committee, its name must include the last name of its controlling candidate (e.g. “...a controlled committee of Mayor Smith”). The Form 410 must also expressly disclose that it is a controlled committee, and identify its controlling candidate. The controlling candidate must sign the form under penalty of perjury.

Here, The Oakland Fund For Measure AA filed a Form 410 with the PEC on March 23 and August 22, 2018. Neither of those forms disclosed that it was a controlled committee, identified Candidate A as its controlling candidate, or included Candidate A’s last name in the committee name. Candidate A did not sign any of the forms.

#### *Form 460*

A Form 460 must include the committee’s full name. For a candidate-controlled committee, its name must include the last name of its controlling candidate (e.g. “...a controlled committee of Councilmember Smith”). The Form 460 must also expressly disclose that it is a controlled committee, and identify its controlling candidate. The controlling candidate must sign the form under penalty of perjury.

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1 On the following dates, The Oakland Fund filed a Form 460 with the PEC, in which it  
2 did not disclose that it was a controlled committee, did not identify Candidate A as its  
3 controlling candidate, and failed to include Candidate A's last name in its committee name:  
4 April 25, 2018 (covering January 1 – March 31, 2018); July 24, 2018 (covering April 1 – June 30,  
5 2018); August 10, 2018 (covering April 1 – June 30, 2018 (amendment)), September 27, 2018  
6 (covering July 1 – September 22, 2018); October 23, 2018 (covering September 23 – October  
7 20, 2018); January 14, 2019 (covering October 21 – December 31, 2018); and June 11, 2019  
8 (covering October 21 – December 31, 2018 (amendment)). Candidate A did not sign any of the  
9 forms.

#### *Liability*

13 Any person who violates any provision of the Oakland Campaign Reform Act, who  
14 causes any other person to violate any provision of this Act, or who aids and abets any other  
15 person in the violation of the Act, may be found liable for an administrative violation by the  
16 PEC. If two or more persons are responsible for any violation, they shall be jointly and severally  
17 liable.<sup>25</sup>

18 "Person" means (among other things) an individual, joint venture, corporation  
19 (including a nonprofit corporation), association, committee, or any other organization or  
20 group of persons acting in concert.<sup>26</sup>

21 The principal officer of a committee is any individual primarily responsible for  
22 approving the political activity of the committee including, but not limited to authorizing the  
23 content of the communications made by the committee, the committee's contributions or

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26 <sup>25</sup> OMC 3.12.270(C).

27 <sup>26</sup> OMC 3.12.040(J)

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1 expenditures, or the committee’s campaign strategy. If more than one individual shares in the  
2 primary responsibility for those activities, each such individual is a principal officer.<sup>27</sup>

3 In addition to a committee itself, persons who qualify as principal officers of the  
4 committee are jointly and severally liable for violations by the committee. For committees  
5 controlled by a candidate, the candidate and the committee's treasurers are deemed to be  
6 principal officers.<sup>28</sup> In addition, an agent acting on behalf of a person is jointly and severally  
7 liable for a violation that arises out of the agent's actions. There is a rebuttable presumption  
8 that “agents” of a committee include any current or former officer of the committee; any  
9 person who has received compensation or reimbursement from the committee; and any  
10 person who holds or has held a position within the committee organization that reasonably  
11 appears to be able to authorize expenditures for committee activities.<sup>29</sup>

12 “Aiding and abetting” is not itself a violation but rather a legal rule that allows the  
13 Enforcement Unit to charge anyone who participated in the underlying violation, even if they  
14 were not the direct perpetrator. The test of whether a person aided or abetted in the  
15 commission of a violation is whether that person in any way, directly or indirectly, aided the  
16 perpetrator(s) by acts or encouraged the perpetrator(s) by words or gestures, instigated or  
17 advised the commission of the violation, or was present for the purpose of assisting in its  
18 commission.<sup>30</sup> An aider and abettor must have knowledge of the illegal purpose of the  
19 perpetrator(s) and have intentionally assisted them in the violation. The aider and abettor is  
20 not only liable for the particular violation that to their knowledge their confederates were

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22 <sup>27</sup> 2 Cal. Code of Regulations § 18402.1.

23 <sup>28</sup> OMC 3.12.230(A)

24 <sup>29</sup> OMC 3.12.230(B)

25  
26 <sup>30</sup> *People v. Villa*, 156 Cal. App. 2d 128, 133, 134 (1957) (applying California Penal Code section 31, which contains a  
27 similar “aiding and abetting” provision to that found under OMC 3.12.270(C)).

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1 contemplating committing, but they are also liable for the natural and reasonable or probable  
2 consequences of any act that they knowingly aided or encouraged.<sup>31</sup>

#### VIOLATIONS:

#### SUSAN MONTAUK

7 Respondent, Susan Montauk (a principal officer of The Oakland Fund, who also  
8 caused, aided and abetted the violation), violated the following Oakland Municipal Code(s):

#### Count 1: Failure to Disclose Controlling Candidate Relationship on Campaign Forms

12 On the following dates, The Oakland Fund filed a Statement of Organization (“Form  
13 410”) with the PEC, in which it did not disclose that it was a controlled committee, did not  
14 identify Candidate A as its controlling candidate, and failed to include Candidate A’s last name  
15 in its committee name. Candidate A did not sign any of the forms.

Form 410s Filed by The Oakland Fund, March – August 2018	
Date Filed	Committee Name Given on Form
March 23, 2018	“The Oakland Fund”
August 22, 2018	“The Oakland Fund For Measure AA”

21 As the controlling candidate, Candidate A’s last name was required to be included as  
22 part of the committee’s name for all purposes. Also, Candidate A was required to be identified  
23 as the controlling candidate on the committee’s Form 410, and was required to sign the  
24 committee’s Form 410.

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27 <sup>31</sup> Id. at 134.

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1 On the following dates, Respondent committee filed a Recipient Committee Campaign  
2 Statement (“Form 460”) with the PEC, in which it failed to include Candidate A’s last name in  
3 its committee name, did not disclose that it was a controlled committee, and did not identify  
4 Candidate A as its controlling candidate. Candidate A did not sign any of the forms as its  
5 controlling candidate:

Form 460s Filed by The Oakland Fund Covering January 1 – December 31, 2018		
Date Filed	Dates Covered	Committee Name Given on Form
April 25, 2018	January 1 – March 31, 2018	“The Oakland Fund”
July 24, 2018	April 1 – June 30, 2018	“The Oakland Fund”
August 10, 2018	April 1 – June 30, 2018 (amendment)	“The Oakland Fund”
September 27, 2018	July 1 – September 22, 2018	“The Oakland Fund for Measure AA”
October 23, 2018	September 23 – October 20, 2018	“The Oakland Fund for Measure AA”
January 14, 2019	October 21 – December 31, 2018	“The Oakland Fund for Measure AA”
June 11, 2019	October 21 – December 31, 2018 (amendment)	“The Oakland Fund”

20 As the controlling candidate, Candidate A’s last name was required to be included as  
21 part of the committee’s name for all purposes. Also, Candidate was required to be identified  
22 as the controlling candidate on the committee’s Form 460, and was required to sign the  
23 committee’s Form 460.

24 On the following dates, Respondent committee filed a Contribution Report (“Form  
25 497”) with the PEC, in which it failed to include Candidate A’s last name in its committee name:  
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#### Form 497s Filed by the Oakland Fund While Candidate A Was Controlling Candidate

Date Filed	Committee Name Given on Form	Activity Reported
August 14, 2018	"The Oakland Fund"	\$77,500 in contributions received
August 29, 2018	"The Oakland Fund For Measure AA"	\$12,000 in contributions received
September 20, 2018	"The Oakland Fund For Measure AA"	\$25,000 in contributions received
September 21, 2018	"The Oakland Fund For Measure AA"	\$1,000 in contributions received
September 25, 2018	"The Oakland Fund For Measure AA"	\$75,000 in contributions received
October 2, 2018	"The Oakland Fund For Measure AA"	\$20,625 in contributions received
October 12, 2018	"The Oakland Fund For Measure AA"	\$63,000 in contributions received
October 15, 2018	"The Oakland Fund For Measure AA"	\$40,000 in contributions received
October 19, 2018	"The Oakland Fund For Measure AA"	\$102,500 in contributions received
October 23, 2018	"The Oakland Fund For Measure AA"	\$10,000 in contributions received
October 24, 2018	"The Oakland Fund For Measure AA"	\$44,800 in contributions received
October 25, 2018	"The Oakland Fund For Measure AA"	\$75,000 in contributions received
October 30, 2018	"The Oakland Fund For Measure AA"	\$15,000 in contributions received
November 1, 2018	"The Oakland Fund For Measure AA"	\$35,000 in contributions received
November 5, 2018	"The Oakland Fund For Measure AA"	\$20,000 in contributions received

As the controlling candidate, Candidate A's last name was required to be included as part of the committee's name for all purposes.

In this way, Respondent violated OMC § 3.12.240, incorporating Cal. Govt. Code §§ 84102(f), 84106.5, 84203, 84211(o)-(p), 84213(a), and Regulation 18402(c)(1) and 18410(a)(13).

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### PENALTIES

Oakland's Campaign Reform Act authorizes the Commission to impose the following base-level and maximum penalties for the following types of violations:

Violation	Counts	Base-Level Per Violation	Statutory Limit Per Violation
Failure to File and/or Disclose Controlling Candidate Relationship on Campaign Forms	1	\$1,000	\$5,000

In addition to monetary penalties, the Commission may issue warnings or require other remedial measures.<sup>32</sup>

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);

<sup>32</sup> OMC § 3.12.270(C).

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- 1 7. The degree to which the respondent cooperated with the PEC's enforcement activity
- 2 in a timely manner;
- 3 8. The relative experience of the respondent.
- 4

5 The PEC has broad discretion in evaluating a violation and determining the appropriate  
6 penalty based on the totality of circumstances. This list of factors to consider is not an  
7 exhaustive list, but rather a sampling of factors that could be considered. There is no  
8 requirement or intention that each factor – or any specific number of factors - be present in  
9 an enforcement action when determining a penalty. As such, the ability or inability to prove  
10 or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an  
11 enforcement action or impose a penalty.

12 Here, the violations resulting from various parties' actions in this case are among the  
13 most serious in the Campaign Reform Act (OCRA). The strict rules applying to candidate-  
14 controlled committees are not mere technicalities but go directly to the very purpose of  
15 campaign finance law. Nearly every major Supreme Court case underpinning our campaign  
16 finance system emphasizes that disclosure of the people controlling and donating to a  
17 campaign is the core feature of these laws, and is one of the principal goals of OCRA.<sup>33</sup> This is  
18 because campaign committees -- particularly those controlled by elected officials such as  
19 Candidate A -- can raise a significant amount of money from sources whose business or other  
20 interests could benefit from being in a candidate or official's good favor, even if that  
21 relationship never rises to a formal quid pro quo. To reduce the possibility that those officials'  
22 subsequent decision-making could be unduly influenced by those campaign contributions,

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23  
24 <sup>33</sup> Another principal goal of OCRA is to limit or ban certain types of contributions to candidates, such as  
25 contributions from City contractors or those in excess of the contribution limit. But if a campaign does not  
26 disclose that it is controlled by a candidate, there is no way to know that these restrictions might even apply to  
27 that campaign.  
28

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1 public disclosure is required in order to reduce the actuality or appearance of corruption, and  
2 to keep the public informed as to the relationship between campaign donors and elected  
3 officials. And beyond these corruption-related concerns, disclosure of who is controlling and  
4 funding a campaign is also upheld by courts as crucial to helping voters make informed choices  
5 as to whether to support or oppose that campaign on election day.

6 In this case, Candidate A used their influence to effectively commandeer and  
7 repurpose another committee to which Candidate A was not publicly attached. This gave a  
8 false impression of independence between Candidate A and donors to the Oakland Fund. It  
9 also prevented voters and regulators from checking whether any of the contributions  
10 received by The Oakland Fund were in compliance with other laws specific to candidate-  
11 controlled committees, such as the prohibition on receiving contributions from City  
12 contractors.

13 Regarding Montauk in particular, however, there are significant mitigating factors that  
14 support a lower penalty. Montauk was one of three members of a volunteer board and had  
15 limited involvement or even knowledge of the violations that took place, other than voting to  
16 support Candidate A's plans in the first place. She was not personally involved in preparing  
17 The Oakland Fund's campaign forms and had limited knowledge of campaign finance law, nor  
18 was she ever advised by more experienced and knowledgeable actors (such as Candidate A)  
19 that there might be potential legal issues to consider. Simply put, Montauk was not really a  
20 "bad actor" in the events described above.

21 Most importantly, Montauk has been forthcoming with PEC investigators, is willing to  
22 cooperate in the resolution of any other related enforcement matters that might arise in  
23 connection with these events, and wishes to work with the PEC to remedy any mistakes or  
24 other violations that may have occurred. There is also a possibility that other people could  
25 ultimately be charged with the same or related violations in connection with this matter, so  
26 the penalty being imposed here is not necessarily meant to be a global resolution but rather  
27 to impose a fair and proportionate penalty upon Montauk individually. While the PEC cannot  
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1 simply “look the other way” given our enforcement responsibilities, the nature of Montauk’s  
2 personal involvement, and the seriousness of the violation involved, we also believe the  
3 mitigating factors described here are significant.

4 In light of these factors, PEC staff makes the following penalty recommendations:

5  
6 **Failure to File and/or Disclose Controlling Candidate Relationship on Campaign**  
7 **Forms (Count 1)**

8  
9 Here, PEC staff and Respondent recommend a penalty of **\$500**:

10

Count	Respondents	Baseline Penalty	Recommended Penalty	Maximum Penalty
1	Susan Montauk	\$1,000	<b>\$500</b>	\$5,000

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12  
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### RECOMMENDATION

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15  
16 Based on the foregoing, PEC staff and Respondent recommend that the Commission  
17 approve their stipulated agreement and impose the following financial penalties:

18 As to respondent SUSAN MONTAUK (Count 1), a penalty in the amount of **\$500**.  
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